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OFFICE OF PETITIONS

In re Application of	:	
Ramon A. Caamano	:	
Application No. 10/801,163	:	
Filing Date: March 8, 2004	:	DECISION ON PETITION
Attorney Docket Number:	:	UNDER 37 C.F.R. §1.10(C)
GRTSTF.036A	:	
Title of Invention: GENERATOR	:	
FOR POWERING A REEL FROM A	:	
FLUID FLOW	:	

BACKGROUND

This is a decision on the petition filed November 12, 2004, under 37 C.F.R. §1.181, which is properly treated as a petition under 37 C.F.R. §1.10(c), requesting that the above-identified application be accorded a filing date of March 5, 2004.

The Office regrets the delay in issuing this decision.

Shortly after the above-identified application was received in the Office, the Office of Initial Patent Examination mailed Petitioner's filing receipt, indicating that the application had been accorded a filing date of March 8, 2004.

Petitioner has alleged that the application was deposited on March 5, 2004, and the Patent Office has incorrectly assigned a filing date of March 8, 2004 to the instant application. Petitioner has set forth that this application was sent to the Office via the "Express Mail Post Office to Addressee" service of

the United States Postal Service (USPS), and that Express Mail label EV319028732US¹ was associated with this mailing. It is further noted that Petitioner has not included a copy of the Express mail label with his petition - Petitioner has set forth that he is not in possession of the processed receipt².

A check of the Office's USPS Express Mail Finder Database computer program was inconclusive. A check of the United States Postal Service's website (<http://www.usps.com/shipping/trackandconfirm.htm>) was also inconclusive, in that it stated that the information pertaining to this Express Mail label number is stored off-line.

However, Petitioner has enclosed a print-out from this same website, presumably from prior to the information being taken off-line. This print-out shows an entry of "Acceptance, March 05, 2004, 4:46 pm, San Francisco, CA 94111." Thus, it is clear that the USPS was in possession of this package on this date.

THE RELEVANT PORTION OF THE MPEP

37 C.F.R. § 1.10 Filing of correspondence by "Express Mail" sets forth, in part:

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

[48 FR 2708, Jan. 20, 1983, added effective Feb. 27, 1983; 48 FR 4285, Jan. 31, 1983, paras. (a) & (c), 49 FR 552, Jan. 4, 1984, effective Apr. 1, 1984;

¹ It is noted that this same Express Mail number appears on the Utility Application Transmittal Sheet, which has been located in the electronic file.

² Petition, page 2.

paras. (a)-(c) revised and paras. (d) - (f) added, 61 FR 56439, Nov. 1, 1996, effective Dec. 2, 1996; paras. (d) & (e) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 67 FR 36099, May 23, 2002, effective June 24, 2002; paras. (c), (d), (d)(3), (e) & (e)(4) revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003; para. (a)(1) revised, 68 FR 48286, Aug. 13, 2003, effective Sept. 12, 2003]

ANALYSIS

37 C.F.R. §1.10(c)(3) requires that any petition under this section of the C.F.R. include a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit. Since it does not appear that a copy of the express mail label has been included, this petition cannot be granted.

If a true copy of the Express Mail label cannot be obtained, Petitioner may wish to consider filing a petition under 37 C.F.R. §1.183 to request that the Office waive 37 C.F.R. §1.10(c)(3).

CONCLUSION

Therefore, this petition is **DISMISSED**.

The filing date will remain March 8, 2004.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.



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